

# ONE CALL CONTRACT

10-2610-007

## CONSULTING CONTRACT

This AGREEMENT is made and entered into this 23rd day of June, 2010, by and between, the South Dakota One Call Notification Board, a state board, of 500 East Capitol Avenue, Pierre, South Dakota 57501, hereinafter referred to as "Board," and Larry L. Janes, of 5536 Doubletree Road, Rapid City, South Dakota 57702, hereinafter referred to as "Consultant."

Consultant's Employer Identification Number is \_\_\_\_\_  
Consultant's State Tax Identification Number is 1021-6427-ST.

The Board hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. Consultant agrees to perform those services described in Exhibit A and by this reference incorporated herein.
2. Consultant's services under this agreement shall commence on August 1, 2010, and end on July 31, 2011 unless sooner terminated pursuant to the terms hereof. The Consultant agrees the Board can extend this Agreement annually, through the execution of a modified Exhibit B, at its option (unless otherwise modified by a special contract terms, condition or specification) for up to four (4) additional one year periods. Notice of intent to extend shall be given by the Board to the Consultant within 90 days of the end of the current contract term. Consultant shall coordinate a Board decision regarding the option to extend the contract prior to the 90 day notice above.
3. The consultant's office and residence shall be located within the state of South Dakota.
4. Consultant shall provide office space, office furniture, and personal supplies and shall provide an automobile for use in providing the services described in Exhibit A. The Board shall provide Internet service, a reliable form of telecommunication service dedicated to the One Call contact number, office equipment and supplies required to perform the services described in Exhibit A. The Consultant may be required to purchase office supplies and promotional or educational materials. The Board will reimburse the Consultant for the cost of this material.
5. The Board will make payments for services upon satisfactory completion of the services on a monthly basis described in Exhibit B.
6. Consultant agrees to indemnify and hold the state of South Dakota, its officers, agents and employees harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors and omissions of the state, its officers, agents or employees.
7. Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:
  - a. Commercial General Liability Insurance

Consultant shall maintain occurrence based commercial liability insurance or equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be less than two times the occurrence limit. Such insurance shall include the South Dakota One Call Notification Board as an additional insured in the event of a claim, lawsuit or other proceedings filed against the South Dakota One Call Notification Board as a result of the services provided pursuant to this agreement.

**b. Business Automobile Liability Insurance**

Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$100,000 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

Before beginning work under this Agreement, the Consultant shall furnish the Board with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days' prior written notice to the Board. The Consultant shall furnish copies of insurance policies if requested by the Board. The Board will reimburse the Consultant for the cost of required insurance policies.

8. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the state of South Dakota.
9. This Agreement may be terminated by either party hereto upon sixty (60) days' written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the Board at any time with or without notice. If termination for such a default is effected by the Board, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the Board because of Consultant's default. Upon termination, the Board may take over the work under this Agreement. If after the Board terminates for a default by Consultant it is determined that the Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.
10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the Board. Termination for any of these reasons is not a default by the Board nor does it give rise to a claim against the Board.
11. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.
12. This Agreement shall be governed by and construed in accordance with the laws of the state of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
14. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Chairman of the Board on behalf of the Board, and by and to Larry L. Janes, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
15. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction; such holding shall not invalidate or render unenforceable any other provision hereof.
16. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

BOARD

CONSULTANT

BY:

  
Bleau LaFave, Chairman  
South Dakota One Call Notification Board

BY:

  
Larry L. Janes,  
Consultant

Dated this 24<sup>th</sup> day of June, 2010

Dated this 23rd day of June, 2010

## **EXHIBIT A**

Consultant agrees to advise and provide administrative services as the Executive Director of the South Dakota One Call Notification Board in a manner to be determined by the Consultant so as to accomplish the following tasks for the South Dakota One Call Notification Board:

1. Manage the day-to-day operations of the South Dakota One Call Notification Board to include the timely processing and coordination of the enforcement process.
  2. Monitor the one call service vendor contract for compliance with the contract's provisions.
    - a. Drafting contract language.
    - b. Understanding technological advances in the industry and insuring that the vendor is implementing appropriate technologies.
    - c. Obtaining member and excavator input on the one call process and working with the vendor to improve the service provided.
  3. Analyze and monitor the financial statements and position of the South Dakota One Call Notification Board.
  4. Prepare an annual plan for South Dakota One Call that includes financial and operational items to be completed during the next fiscal year.
  5. Research regulations and statutes in other states and determine their effectiveness and application to the South Dakota One Call System.
    - a. Draft legislative or administrative rules for consideration by the Board.
    - b. Identify and coordinate lobbying efforts on the state level.
  6. Understand the legislative and administrative rules.
  7. Research grant opportunities and prepare grant requests when appropriate along with tracking grant expenditures and filing final grant reports.
  8. Monitor and process legal complaints received by the South Dakota One Call Notification Board.
  9. Develop and prepare agenda and board meeting materials.
  10. Attend meetings of the South Dakota One Call Notification Board.
  11. Recommend and implement board policies for the South Dakota One Call Notification Board.
  12. Research, analyze, draft, and present to the Board long and short range operational plans.
  13. Recommend and implement education and marketing programs.
  14. Represent the Board at industry meetings and events on a regional and national level.
  15. Attend member and excavator meetings and conferences on behalf of the South Dakota One Call Notification Board.
  16. Prior to September 1<sup>st</sup> of each year, prepare an annual report describing financial and operational aspects of South Dakota One Call for the previous fiscal year.
  17. Other duties as assigned by the Board.
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## **EXHIBIT B**

### **Compensation for Services Rendered in Exhibit A**

**\$ 5,000 monthly for a total annual amount not to exceed \$ 60,000**

### **Reimbursement for Personal Expenses Associated with Services Rendered in Exhibit A**

**Transportation – Mileage shall be reimbursed at the rates set forth by the Internal Revenue Service. If automobile travel is used in lieu of airline transportation, the reimbursement shall be the lower of the mileage or the airline ticket price. Expenses associated with commercial transportation shall be reimbursed at the actual rate of the expense.**

**Lodging – Lodging shall be reimbursed at actual costs. When lodging is purchased for other individuals, the name of the person and the business purpose of the meeting should be identified on the reimbursement request.**

**Meals – Meals shall be reimbursed at the actual costs. When meals are purchased for other individuals, the name of the person and the business purpose of the meeting should be identified on the reimbursement request.**

**Expenses associated with lobbying, legislative and member relationship functions shall be reimbursed at the actual rate of the expense.**

**All requests for reimbursement shall include an original receipt and an explanation of the purpose of the function.**

**Maximum Annual Value of this contract is \$200,000.**

**Exhibit B is effective from August 1, 2010 through July 31, 2011.**

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